

**Notice of Allowability**

Application No.

09/919,932

Examiner

Richard G Hutson

Applicant(s)

MOECKEL ET AL.

Art Unit

1652

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to paper filed on 2/28/2001.
2. ☒ The allowed claim(s) is/are 43,46,52-55,64-67 and 73.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Richard G Hutson, Ph.D.  
Primary Examiner  
Art Unit: 1652

### **DETAILED ACTION**

Applicants submission of a certified English translation of German applications DE 1042224.0 filed September 2, 2000 and DE 10109690.9 filed February 28, 2001, is acknowledged.

Applicants' arguments filed on 4/5/2004 have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

The rejection of claims 41, 44, 47, 56, 58 and 59 under 35 U.S.C. 102(a) as being anticipated by Hwang et al. (Database EMBL, Accession No. AF220150, 2/5/2001) and the rejection of claims 56-59 under 35 U.S.C. 103(a) as being unpatentable over Hwang et al. is hereby withdrawn based on applicants submission of a certified translation of applicants priority documents as discussed above.

### ***Information Disclosure Statement***

Applicant's comments with respect to the previously filed information disclosures are acknowledged. Specifically applicants comments that it has not been indicated that EP 11087890A2 has been considered, are unclear because as indicated on the copy of the 1449 sent to applicants with the office action of 7/15/2003, reference AN: 1 108 790, date: 06/20/2001, Country: Europe, was indicated as being considered as indicated by initialing the reference. Most likely it was previously lined through, because its listing was a duplicate.

***Examiner's Amendment***

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 4/26/2004, Daniel Periera requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 15-0030 the required fee of \$110.00 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel claims 41, 42, 44, 45, 47-51, 56-63, 68-72 and 74 without prejudice.

In claim 43, before "isolated" delete "The" and insert "An" and  
after "polynucleotide" delete "of Claim 42,".

In claim 66, in "glycerolaldehyde 3 phosphate" insert a hyphen between "3" and "phosphate".

In claim 67, after "meso-diaminopimelate D-dehydrogenase" delete "phosphoenolpyruvate carboxykinase, glucose 6-phosphate isomerase, and pyruvate oxidase".

***Allowable Subject Matter***

Claims 43, 46, 52-55, 64-67 and 73 are allowed.

The following is an examiner's statement of reasons for allowance: The prior art does not teach or suggest a polynucleotide sequence comprising the complete polynucleotide sequence of SEQ ID NO: 1 from nucleotide position 1 to position 1720.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G Hutson whose telephone number is (703) 308-0066. The examiner can normally be reached on 7:30 am to 4:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Application/Control Number: 09/919,932  
Art Unit: 1652

Page 5

A handwritten signature in black ink, appearing to read 'Richard G. Hutson', with a horizontal line extending from the end of the signature.

Richard G Hutson, Ph.D.  
Primary Examiner  
Art Unit 1652

rg  
4/27/2004